

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SIR GIORGIO SANFORD CLÁRDY,
Plaintiff,

Case No. 6:18-cv-01200-CL
OPINION & ORDER

vs.

TODD BYERLY; COLLETTE PETERS;
MICHAEL GOWER; DANIELLE FUZI;
CHRISTY HUTSON; GABRIELL GITNES;
JANE JUNG; JANE CACERES,

Defendants.

AIKEN, District Judge:

On October 15, 2018, Magistrate Judge Mark D. Clarke issued his Findings and Recommendation (“F&R”) (doc. 10), recommending that plaintiff Sir Giorgio Sanford Clárdy’s Corrected Application to Proceed IFP (doc. 9) be denied and the case be dismissed. Plaintiff timely filed Objections to the F&R (doc. 18). The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to a magistrate judge’s F&R, the District Court must make a *de novo* determination of the specified proposed findings or recommendations to which the objection is made. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

In his F&R, Judge Clarke determined that plaintiff, an inmate at the Oregon State Penitentiary, is prohibited from proceeding in forma pauperis (“IFP”) by the “three

strike” provision in 28 U.S.C. § 1915(g) because plaintiff (1) has had at least three cases dismissed as frivolous or for failure to state a claim and (2) does not allege that he is in imminent danger of serious physical injury. F&R at 2.

Plaintiff avers that Judge Clarke erred in rejecting plaintiff’s arguments that (1) his allegations are sufficient under § 1915(g) because they meet the definition of “bodily injury” in 18 U.S.C. § 242 and (2) § 1915(g) is unconstitutional because it interferes with inmates’ access to the courts in violation of the First Amendment. Obj. at 5-9. I find no error in Judge Clarke’s analysis.¹


In his objection, plaintiff also seeks leave to amend his complaint. *Id.* at 3-5. Because the deficiencies of the Complaint could be cured by amendment, plaintiff’s request is granted.

CONCLUSION

For the reasons stated above, the Court ADOPTS the reasoning in Judge Clarke’s F&R (doc. 10). Plaintiff’s Amended Motion to Proceed IFP (doc. 9) is DENIED and the case is DISMISSED with leave to amend. Plaintiff shall have thirty (30) days in which to file an amended complaint.

IT IS SO ORDERED.

DATED this 15 day of March 2019.



Ann Aiken
United States District Judge

¹ Plaintiff also objects to Judge Clark’s failure to his argument that “restrictions on pro se litigants are unconstitutional.” Obj. at 9-11. Judge Clarke did not err in rejecting this argument without discussion.